

REMARKS

Claims 47-49 and 51 have been rejected by the Examiner under 35 USC 102(b) as being anticipated by or, in the alternative under 35 USC 103(a) as being obvious over Avellanet, U.S. Patent 5,733,496. Also, claim 50 has been rejected by the Examiner under 35 USC 103(a) as being unpatentable over Avellanet in view of Vegoe et al., U.S. Patent 5,180,372. These rejections are respectfully traversed.

The present invention as defined in claims 47-54 is directed to a rewindable flexible film or a flexible film wound into a roll as a precursor, said flexible film which can be, for example, paper or a polyolefin such as polyethylene, being provided at selective locations or regions thereof with a structurally transformable substance, for example, a polyether and a modifying or activating agent which can be activated by a non-ionizing type of energy, such as for example heat, to initiate a change of the structurally transformable substance into a more rigidly form. Thus, the flexible film, the structurally transformable substance and the modifying or activating agent coexist until it is desired to transform the flexible film in selective regions thereof into various types of objects. It is believed that neither the Avellanet or Vegoe et al. patents show, in the remotest way, the Applicants' inventive contribution. Thus, the Avellanet reference is not concerned with a substantially flat bent flexible film which is used to form objects of specific structural definition. Rather, the referenced patent is concerned with a catheter which is selectively irradiated to provide a catheter with improved stiffness characteristics. Thus, there is no discussion in the reference patent of providing a flexible film per se, or one which is wound into a roll but which can be activated at a later time depending upon its desired use. Thus, the flexible film or a roll containing a flexible film comprises a number of features, that is, the flexible film itself, a structurally transformable substance provided in selective regions of the flexible film and in addition a modifying agent disposed within the flexible film, whereby the flexible film, the structurally transformable substance and the modifying agent coexist in the flexible film layer and when it is desired to transform the flexible film into selective objects, the modifying agent is activated by non-ionizing energy causing a structural transformation of the structurally transformable substance in said selective

regions of the objects to be formed from the flexible film. The catheter of the Avellanet patent is not a flexible film or a flexible film wound on a roll but rather is a tubular member which is sized and dimensioned for use as a catheter. According to the teachings of the Avellanet patent, the tubular catheter is irradiated to impart a desired stiffness to the tubular member. The irradiation cross-links polymer molecules within the polymer tubular member wherein the cross-linking of the polymer molecules alter the properties of polymer molecules to create the tubular member having improved stiffness characteristics. In addition to not being produced from a flexible film, the Avellanet patent does not disclose the use of a transformable substance which is provided in the film as well as the use of a modifying agent which is also provided in the film, the activation of the modifying agent by the administration of non-ionizing energy causing a structural transformation of the structurally transformable substance in selective regions. The Avellanet patent merely irradiates a tubular member to cause cross-linking and ultimate stiffness and does not even remotely suggest the use of a structurally transformable substance, a modifying agent for activating the structurally transformable substance and because of the use of the structurally transformable substance, selective areas of the objects to be formed can be activated through the use of the modifying agent. Through the use of the structurally transformable substance and the modifying agent, the Applicants can be selective in the formation of a variety of products which cannot possibly be achieved by merely irradiating a tubular member (catheter) as described in the Avellanet patent.

In the Examiner's Advisory Action dated July 26, 2006, the Examiner argues that the recitation "a rewindable flexible film or flexible film" is not given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. However, it is believed that the Examiner's position is incorrect inasmuch as all of the independent claims, that is, claims 47, 48 and 52-54 clearly contain language which ties the preamble of each of these claims to the body of the claim. Thus, in every instance, there is clear reference between the preamble of the claims and the body of the claims and, as such, the Examiner should consider all

aspects of the independent claims when comparing the substance thereof with the Avellanet patent. Although, as the Examiner argues, the catheter disclosed by the Avellanet patent may be made from a flexible film, this flexible film is not provided with a plurality of selective regions, each of said selective regions containing a structurally transformable substance and a modifying agent whereby upon the administration of non-ionizing energy, the modifying agent is activated to produce a structural transformation of said structurally transformable substance (not to the entire catheter as in the Avellanet patent) to a partially rigid or substantially rigid state in selective regions to form structurally defined objects. With all of the above distinctions in mind, it is incomprehensible as to how the Examiner can reasonably apply the teachings of the Avellanet patent to the Applicants' inventive contribution as defined by the claims of the present application.

The Vegoe et al. patent is relied upon by the Examiner to teach that the polymer used for tubing can be any polymer or polymer blend suitable for use in catheter that can be cross-linked by the application of radiation, for example, polyethylene (see Col. 2, lines 5-9). Here again, the Vegoe et al. patent is not concerned with providing a flexible material or a roll of flexible material but rather merely shows a catheter which uses radiation cross-linking to provide better splittability for catheters used in procedures for inserting catheters into the human body. Not only does the Vegoe et al. patent not fill the deficiencies of the Avellanet patent, but in addition, the Vegoe et al. patent is concerned with a problem and solution which is completely remote from that of the present invention. Even if, *arguendo*, it would be possible to combine the teachings of the references as suggested by the Examiner, because of the absence in relevance of both of the references relied upon by the Examiner, no possible interpretation of the respective references can render obvious claims 47-54 of the present application. Thus, since neither the Avellanet or Vegoe et al. patent show a flexible film which can be paper or polyethylene, a structurally transformable substance, which can become, for example, a polyethylene resin and a modifying agent which can be, for example, a hydroxycyclohexalphenal ketone, it is believed that the present invention defines an inventive contribution which is not even remotely

Application No. 10/092,260
Amendment dated March 9, 2007
Preliminary Amendment filed with RCE

Docket No.: 0695-0118P

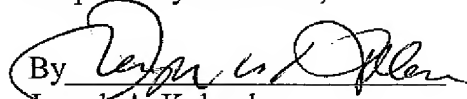
recognized by the prior art relied upon by the Examiner. Accordingly, reconsideration of the rejections and allowance of all of the claims of the present application are respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Joseph A. Kolasch Reg. No. 22,463 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: March 9, 2007

Respectfully submitted,

By 

Joseph A. Kolasch

Registration No.: 22,463

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant